MURUGAPPA CHETTIAR LAKSHMANAN (WASI TUNGGAL HARTA PESAKA M.R.L. MURUGAPPA CHETTIAR, SIMATI)

v.

LEE TECK MOOK

COURT OF APPEAL, KUALA LUMPUR
TUAN GOPAL SRI RAM JCA
DATO' V.C. GEORGE JCA
DATO' ABU MANSOR BIN ALI JCA
[CIVIL APPEAL NO. B02-90 OF 1994]
13 MARCH 1995

***LAND LAW** : Application for removal of caveat - Intended purchaser of land paying deposit to holder of power of attorney of owner of land - Negotiations for sale - No concluded contract - Whether intended purchaser had a caveatable interest - Appeal against decision of Judicial Commissioner dismissing application for removal of caveat.*

One Murugappa Chettiar, now deceased, was the owner of a piece of land in the Mukim of Serendah. The deceased appointed one Adaikappan Chettiar as his attorney. The respondent paid a sum of RM2,000 to the said attorney in return for an alleged option to purchase the said land. The respondent then entered into negotiations with the said attorney for the sale of the land.

Upon the failure of the said attorney to respond to the numerous reminders to conclude the sale, the respondent entered a caveat against the title to the land in question.

The appellant applied to remove the caveat entered by the respondent. On appeal, the question that arose was whether the learned Judicial Commissioner was right in holding that the respondent's caveat should remain against the title of the land in question.

Held:

[1] The principles formulated in the case of *Luggage Distributors (M) Sdn. Bhd. v. Tan Hor Teng & Anor.* as applied to the present appeal require an investigation into the following matters. First, whether the respondent, on the material set out by him in his application under s. 323(1) of the National Land Code 1965, has disclosed a caveatable interest. Secondly, if he has established a caveatable interest, whether the evidence he produced before the learned Judicial Commissioner in support of his claim to that caveatable interest discloses a serious question to be tried. Lastly, whether the balance of justice lies in favour of the caveat remaining on the Register pending the disposal of the suit.

[2] It is clear that nowhere in the application, for the entry of the caveat, is there an assertion of a concluded contract for the sale and purchase of the land in question. In the absence of such an assertion it cannot be said that the respondent has a claim to the title to the land.

[3] It is axiomatic that negotiations for a contract, however advanced, do not amount to a contract. Until and unless a purchaser has an enforceable contract for the sale of land, he can lay no claim to the title to registered land. *A fortiori*, he has no interest that is capable of protection by the entry of a caveat.

[4] A careful reading of the learned Judicial Commissioner's judgment reveals that she did not address her mind at all to this aspect of the case. This non-direction by the learned Judicial Commissioner amounts to serious misdirection on her part. Had the learned Judicial Commissioner adopted the correct approach, she would have entertained no difficulty in

concluding that the respondent had no caveatable interest in law. On this ground alone the caveat is unsustainable and ought to be removed.

[5] Even assuming that the respondent was given an option to purchase, there is not a shred of evidence to show that the respondent had exercised it within its duration. Furthermore, the evidence of the attending solicitor does nothing to advance the respondent's case as all she had were instructions to prepare an agreement which may or may not be executed by the parties, depending upon whether they agreed to the terms therein. In the circumstances, the evidence adduced did not disclose a serious question to be tried.

[Appeal allowed with costs. Caveat ordered to be removed].

[**Bahasa Malaysia** Translation of Headnote]

UNDANG-UNDANG TANAH: *Permohonan untuk membatalkan kaveat - Bakal pembeli tanah membayar deposit kepada pemegang surat kuasa wakil tuanpunya tanah - Perundingan untuk jualan - Tidak terdapat kontrak muktamad - Samada bakal pembeli mempunyai kepentingan yang boleh dikaveatkan - Rayuan terhadap keputusan Pesuruhjaya Kehakiman yang menolak permohonan untuk membatalkan kaveat.*

Seorang bernama Murugappa Chettiar, kini telah meninggal dunia, adalah tuanpunya sebidang tanah dalam Mukim Serendah. Simati telah melantik seorang yang bernama Adaikappan Chettiar sebagai wakilnya. Responden telah membayar sebanyak RM2,000 kepada wakil tersebut bagi mendapatkan satu opsyen untuk membeli tanah tersebut. Responden kemudiannya telah memasuki perundingan-perundingan dengan wakil tersebut untuk penjualan tanah tersebut.

Setelah wakil tersebut gagal untuk bertindak kepada peringatan-peringatan yang banyak untuk selesaikan penjualan tersebut, responden telah memasukkan satu kaveat terhadap hakmilik kepada tanah yang dipersoalkan itu.

Perayu telah memohon untuk membatalkan kaveat yang telah dimasukkan oleh responden itu. Atas rayuan, persoalan yang timbul adalah samada Pesuruhjaya Kehakiman yang bijaksana betul dalam memutuskan bahawa kaveat responden seharusnya kekal terhadap hakmilik tanah yang dipersoalkan.

Diputuskan:

[1] Prinsip yang dirumuskan dalam kes *Luggage Distributors (M) Sdn. Bhd. lwn. Tan Hor Teng & Anor*. sepertimana yang terpakai kepada rayuan semasa ini memerlukan satu penyiasatan ke dalam perkara-perkara yang berikut. Pertamanya, sama ada responden, atas material yang dibentangkan olehnya dalam permohonannya di bawah s. 323(l) Kanun Tanah Negara, 1965, telah mendedahkan satu kepentingan yang boleh dikaveatkan. Keduanya, sekiranya beliau telah menentukan satu kepentingan yang boleh dikaveatkan, samada keterangan yang beliau kemukakan di hadapan Pesuruhjaya Kehakiman yang bijaksana bagi menyokong tuntutannya kepada kepentingan yang boleh dikaveatkan itu mendedahkan satu persoalan yang serius untuk dibicarakan. Akhirnya, sama ada imbangan keadilan memihak kepada kaveat dikekalkan pada Daftar sementara menantikan penyelesaian guaman tersebut.

[2] Adalah jelas bahawa tidak terdapat di mana-mana dalam permohonan untuk kemasukan kaveat tersebut, penegasan mengenai satu perjanjian muktamad bagi pembelian dan penjualan tanah yang dipersoalkan itu. Dalam ketiadaan penegasan yang sedemikian, adalah tidak boleh diperkatakan bahawa responden mempunyai tuntutan ke atas hakmilik kepada tanah tersebut.

[3] Adalah jelas bahawa perundingan untuk sesuatu perjanjian, bagaimana lanjut sekalipun, tidak membawa kepada satu perjanjian. Kecuali dan sehingga seseorang pembeli mempunyai

satu perjanjian yang berkuatkuasa bagi penjualan tanah, beliau tidak berhak untuk menuntut terhadap hakmilik kepada tanah berdaftar. *A fortiori*, beliau tidak mempunyai kepentingan yang boleh dilindungi melalui kemasukan satu kaveat.

[4] Satu penelitian terhadap penghakiman Pesuruhjaya Kehakiman yang bijaksana menunjukkan bahawa beliau telah tidak memikirkan aspek ini dalam kes tersebut. Ketidak-arahan ini oleh Pesuruhjaya Kehakiman yang bijaksana telah membawa kepada salah-arahan yang serius di pihaknya. Sekiranya Pesuruhjaya Kehakiman telah menerimapakai pendekatan yang betul, beliau tentunya tidak mengalami sebarang kesukaran dalam memutuskan bahawa responden tidak mempunyai apa-apa kepentingan yang boleh dikaveatkan di sisi undang-undang. Atas alasan ini sahaja, kaveat tersebut adalah tidak dapat dipertahankan dan seharusnya dibatalkan.

[5] Sungguhpun menganggapkan bahawa responden telah diberikan satu opsyen untuk membeli, tidak terdapat sedikit pun keterangan bagi menunjukkan bahawa responden telah melaksanakannya dalam tempohnya. Selanjutnya, keterangan peguamcara yang bertanggungjawab tidak sama sekali membantu kes responden kerana apa yang beliau mempunyai adalah arahan-arahan untuk menyediakan satu perjanjian yang mungkin akan atau tidak akan disempurnakan oleh pihak-pihak tersebut, bergantung atas samada mereka bersetuju kepada terma-terma di dalamnya. Dalam keadaan yang sedemikian, keterangan yang dikemukakan tidak mendedahkan persoalan yang serius untuk dibicarakan.

[Rayuan dibenarkan dengan kos. Kaveat dibatalkan].

Cases referred to:
Luggage Distributors (M) Sdn. Bhd. v. Tan Hor Teng & Anor. Civil Appeal No. W-02-38-94 (unreported) ***(foll)***
Ayer Hitam Tin Dredging Malaysia Berhad v. YC Chin Enterprises Sdn. Bhd. [1994] 2 MLJ 754 ***(foll)***

Legislation referred to:
National Land Code 1965, s. 323(1), 327(1)
Powers of Attorney Act 1949

For the appellant - R.R. Sethu (G.C. Ng with him); M/s. R.R. Sethu
For the respondent - Y.K. Leong; M/s. Riza Leong & Partners

JUDGMENT

Gopal Sri Ram JCA:

This is an appeal from the decision of Ranita Hussein JC, given on 15 August 1994, dismissing the appellant's application made by originating summons for the removal of a caveat entered by the respondent against the title to the appellant's land. The appeal was heard on 16 February 1995, and, at the conclusion of argument, it was allowed, indication being given to Counsel that written reasons would be given. These now follow.

The facts relevant to this appeal may be shortly stated. Murugappa Chettiar, now deceased, and to whom we shall refer as "the deceased", is, and was, at all material times, the registered proprietor of all that land held under C.T. No. 24212 for Lot No. 2113 in the Mukim of Serendah. Under his hand, by a Deed dated 1 June 1987, he appointed one Adaikappan Chettiar (whom we shall refer to as Adaikappan) as his attorney. The Power of Attorney did not empower Adaikappan to sell the land in question. It was registered with the Registrar of the High Court as required by the Powers of Attorney Act, 1949. Consequently, anyone who wished

to find out exactly what powers Adaikappan had as the deceased's attorney could easily do so by conducting a search at the Registry. On 23 April 1992, Adaikappan, in consideration of a sum of RM2,000 received by him, issued a document to three persons. They were the respondent, one Chan Yin Loong and one Nachiappa Chettiar. There is considerable dispute between the parties to this appeal about what this document actually amounts to. The respondent claims it is an option to purchase the deceased's land. The appellant claims that it is not. The conclusion we arrived at and the process by which we reached it make it unnecessary for us to resolve this issue. It is not the critical fulcrum upon which this case turns. We will assume (without deciding) in the respondent's favour and proceed on the basis that the document is an option.

The next event of significance to which attention was drawn is a meeting that took place in late March between Adaikappan and the respondent's solicitor, one Miss Mathilda Chin. The appellant says that at that meeting Miss Chin handed to Adaikappan a manuscript containing the proposed terms of the sale and purchase. The respondents dispute this. Again, we are spared the task of resolving this issue. We will once more assume, but without deciding the point, that the manuscript did not emanate from the solicitor. For it does not matter to the result.

What actually transpired at that meeting is set out in the affidavit of Ms. Mathilda Chin and it is best that we reproduce her evidence. This is what she said in the material paragraphs of her affidavit affirmed on 5 August 1994.

> 3. I wish to state that about late March, 1992, one Lee Tek Mook, NRIC No. 3318939 together with one Adaikappan s/o Narayanan Chettiar, Attorney of L. Murugappa Chettiar, came to see me regarding the sale and purchase of a piece of land known as Certificate of Title No. 24212, Lot 2113, Mukim of Serendah, District of Ulu Selangor.
>
> 4. I was informed by Mr. Lee Tek Mook that he wished to purchase this said piece of land from the registered proprietor by his attorney and that infact there already exist between Mr. Lee and the proprietor by his attorney an agreement for the sale and purchase of the said land. In consideration thereof, Mr. Lee had paid an ernest deposit of the sum of RM2,000 which the registered proprietor attorney had accepted and acknowledged receipt.
>
> 5. I further wish to state that, I was instructed by Mr. Lee to prepare a formal sale and purchase agreement with regards to the sale of the said land.
>
> 6. During this meeting, the registered proprietor's attorney informed me that he will be executing the sale and purchase agreement on behalf of the registered proprietor as he has the power and authority to conduct the sale.
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> 7. In response to the representation by the registered proprietor as aforesaid, I requested to see a copy of his power of attorney. He then showed me a copy which infact had a clause granting him the power and authority to sell.
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> 8. I verily believe that, in the event that the registered proprietor's attorney did not have the power and authority to sell the said land, I would not have advised Mr. Lee to proceed with the sale.
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> 9. Thereafter, I had written to the registered aproprietor's attorney on numerous occasions as regards execution of the sale and purchase agreement in order to complete the sale. However, we received no response from him until 31 April 1993, when we received a letter dated 23 March 1993 from R.R. Sethu representing the executor and trustee of the estate of the registered proprietor.

Lest it be is thought that they are of our making, we pause to point out that all errors appearing in the affidavit aforesaid are to the credit of the solicitor who settled that document.

Resuming the factual narrative, on 20 April 1992, solicitors for the respondent wrote to Adaikappan a letter which is in the following terms:

> Wan Haron Sukri & Nordin
> Advocates & Solicitors
> 20 April 1992
>
> Adaikappan s/o Narayanan Chettiar
> Attorney of L. Murugiappa Chettiar
>
> By Hand
>
> Dear Sir,
>
> Re: **Land held under 24212, Lot 2113, Mukim Serendah, Daerah Ulu Selangor**
>
> We refer to the discussion between your goodself and our client namely Mr. Lee Tek Mok held in our office sometime last week. You had agreed to contact Mr. L. Murugiappa Chettiar who is presently in India on an urgent basis and revert to us with your comments on the terms and conditions stated by our client. As of todate you have yet to revert to us with your further instructions. Please let us have your instructions so that we can proceed to the preparation of the agreement for the sale and purchase of the abovesaid property.
>
> Thank you,
>
> Yours faithfully,
>
> Sgd.

Nothing further was heard in response to this letter. The deceased died in India on 27 April 1992 and on 10 July 1992, the respondent entered a caveat against the title to the land in question. The grounds disclosed in the statutory form for the entry of the caveat are as follows:

> a) Saya telah membayar wang pendahuluan (Earnest Deposit) sebanyak Malaysia Ringgit Dua Ribu (RM2,000) sahaja kepada tuanpunya tanah iaitu L. Murugappa Chettiar a/l Letchumanan Chettiar sebagai bukti tujuan saya membeli hartanah yang dikenali sebagai CT24212 Lot No. 2113 Mukim Serendah, Daerah Ulu Selangor.
>
> b) Saya telah mengadakan perbincangan dan perjumpaan dengan wakil (Attorney) iaitu Adaikappan s/o Narayanan Chettiar (NO. K/P 7887303) mengenai terma-terma dan syarat-syarat Perjanjian Jual Beli. Beliau tidak memberi jawapan balas kepada saya walaupun saya serta peguam saya telah menghantar surat-surat kepada wakil (Attorney) tuan tanah supaya peguam saya dapat menyediakan Perjanjian Jual-Beli untuk ditandatangani oleh kedua-dua pihak.
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> c) Sementara menunggu Surat Perjanjian ditandatangani dan harta tanah dipindahmilik kepada saya, saya memohon supaya kaveat dimasukkan untuk menjaga kepentingan dan hak saya.

Following the entry of the caveat, the respondent, through his solicitors, wrote two letters, the first on 18 November 1992 and the second on 17 February 1993. Both these letters continued to entreat Adaikappan to provide a response to the draft sale and purchase agreement. On 23 March 1993, the appellant's solicitors wrote to the respondent's solicitors. In it they, *inter alia*, asserted the absence of any concluded contract and called for the withdrawal of the caveat. The respondent having provided no answer to this letter, the appellant took out an originating summons seeking an order under s. 327(1) of the National Land Code ("the Code") for the removal of the caveat. That summons was scheduled to be heard on 4 July 1994, but was eventually heard and disposed of on 15 August 1994. As we

observed at the outset, it was dismissed by the learned Judicial Commissioner. In the meantime, on 4 August 1994, the respondent filed a suit for the enforcement of the alleged contract he had with the respondent.

Based on these facts, there is only one issue that falls to be decided in this appeal, namely, whether the learned Judicial Commissioner was right in holding that the respondent's caveat should remain against the title of the land in question.

In the resolution of this issue, reference may be made to the recent decision of this Court in *Luggage Distributors (M) San. Bad. v. Tan Hor Teng & Anor.* Civil Appeal No. W-02-38-94, yet unreported. We there attempted to collect some of the relevant authorities and to re-state the law on the subject. In particular, we enumerated the three steps or stages through which a caveator must pass in order to sustain his caveat. We do not propose to repeat what was said in that case with regard to interests that are caveatable and to the approach that a Court should take when deciding whether a caveat should remain or be removed.

The principles formulated in *Luggage Distributors* (*supra*) as applied to the present appeal require an investigation into the following matters. First, whether the respondent, on the material set out by him in his application under s. 323(1) of the Code, has disclosed a caveatable interest. Secondly, if he has established a caveatable interest, then, whether the evidence he produced before the learned Judicial Commissioner in support of his claim to that caveatable interest discloses a serious question to be tried. Lastly, if the first two questions are resolved in the respondent's favour, then, whether the balance of convenience, or more appropriately, the balance of justice, lies in favour of the caveat remaining on the Register pending the disposal of his suit.

With these matters in mind we now turn to address ourselves to the first step of the inquiry that has to be undertaken. To recapitulate, the grounds that the respondent asserted in his application in order to lay claim to the title to the land are: (1) That he paid an earnest deposit of RM2000; (2) That he had discussions and meetings with Adaikappan on the terms and conditions of the sale and purchase agreement; (3) That Adaikappan had not responded to letters written by the respondent and his solicitor for the preparation of the sale and purchase agreement; and (4) That the caveat is being entered pending the execution of that agreement and the transfer of the property to him.

Now, it is clear that nowhere in the application is there an assertion of a concluded contract for the sale and purchase of the land in question. In the absence of such an assertion it cannot be said that the respondent has a claim to the title to the land.

It is axiomatic that negotiations for a contract, however advanced, do not amount to a contract. In *Ayer Hitam Tin Dredging Malaysia Berhad v. YC Chin Enterprises Sdn. Bhd.* [1994] 2 MLJ 754, at p. 763, Edgar Joseph Jr. SCJ, when delivering the unanimous decision of the Supreme Court, summarised the law in words which express so well our own views on the matter that we find it unnecessary to go much further than to quote them:

> To emphasize the point, it was pointed out that the draft master agreement prepared by Messrs Rashid & Lee, solicitors for MMCB, sometime in 1986, had not been signed as the parties could not agree on the terms thereof.
>
> On behalf of the plaintiff, it was submitted that all essential terms had been agreed, the parties had intended to assume and had assumed presently enforceable obligations, and that all that remained to be done was to put these terms into the form of a contract. The defendant's contention requires reading the words 'subject to contract' into the letter of 19 September 1984, when they are in fact not there - so it was said.

> Broadly stated, the result of this appeal depends upon the answer to the question whether, having regard to the circumstances outlined above, the letter of 19 September 1984 embodies any contractual obligations between the parties.
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> In *Smith v. Hughes* it was said that the existence of an agreement depends upon the intention of the parties, and that for there to be an agreement the parties must be *ad idem*, i.e., there must be a consensus between them.
>
> But, bearing in mind the familiar saying that a person's beliefs or his state of mind are just as much facts as the state of his digestion or the existence of a tangible object, from what factors may the existence of an agreement be inferred? **The authorities show that such inference must be drawn from the language the parties have used, their conduct, regard being had to the surrounding circumstances, and the object of the contract.** [Emphasis added].

Until and unless a purchaser has an enforceable contract for the sale of land, he can lay no claim to the title to registered land. *A fortiori*, he has no interest that is capable of protection by the entry of a caveat. As we have said, the application for the entry of the caveat in the instant case contains no assertion of a concluded contract.

A careful reading of the learned Judicial Commissioner's judgment reveals that she did not address her mind at all to this aspect of the case. In fact, nowhere in her judgment is there any reference to the grounds relied upon by the respondent in his application in Form 19B; and this despite a sustained submission on the point by Encik Sethu of Counsel who appeared for the appellant both on the appeal and in the Court below. This non-direction by the learned Judicial Commissioner amounts to a serious misdirection on her part. Had she adopted the correct approach, we are certain that she would have entertained no difficulty in concluding, as we did, that the respondent had no caveatable interest in law. In our judgment, on this ground alone the caveat is unsustainable and ought to be removed.

It follows that there is no necessity to proceed any further to consider the other two stages of the inquiry. But we are confident that in the unlikely event of the matter having proceeded to the second stage of the inquiry, it would most certainly have met its doom there. There are compelling reasons for this conclusion.

Firstly, upon the assumption made in the respondent's favour that the document dated 14 March 1992, is an option, there is not a shred of evidence to show that the respondent had exercised it within its duration. And in fairness to Encik Y.K. Leong of Counsel for the respondent, it was frankly conceded that there was no letter from the respondent indicating that he was exercising the option. We say nothing, of course, of his inability to exercise it in his own name without the concurrence of the other two grantees.

Secondly, when the affidavit of the attending solicitor, Ms. Mathilda Chin is carefully read, it is noteworthy that there is not a word in it about any of the terms and conditions on which the sale was to take place. All she had at best were instructions to prepare an agreement which may or may not be executed by the parties, depending upon whether they agreed to the terms therein. Her evidence, even when looked upon with a most indulgent eye, does nothing to advance the respondent's case any further from the hopeless position in which it stands.

Lastly, the respondent's case does not stand up to the minute scrutiny which the law requires to be undertaken at the second stage of curial inquiry. It will be recalled that the Form 19B relied for caveatability entirely upon the existence of negotiations for a contract. Yet, in his address to us Encik Leong said that he was relying upon the exercise by the respondent of

the option in question to sustain his client's right to caveat the appellant's land. As to the merits of that argument, we have already pointed out the absence of evidence to show any exercise of the option.

But of equal importance is the obvious contradiction between the original case made out in the caveat documents and the entirely new case made out during argument both before the learned Judicial Commissioner and this Court. This variance was completely missed by the learned Judicial Commissioner when she came to assess the quality of the evidence presented to her. In our judgment, upon the assumptions made in the respondent's favour, there was lacking, in the Court below, that critical assessment which the law requires a judicial arbiter to undertake in a case such as the present.

The reasons which we have given make it unnecessary to proceed to the third and final stage of the inquiry to determine where the justice of the case lies.

In the light of all that we have said, it was crystal clear that the caveat ought not to be allowed to remain. Accordingly, the appeal was allowed and an order in terms of the appellant's summons made. The respondent was also ordered to bear the costs of this appeal and the costs in the Court below. The deposit was ordered to be refunded to the appellant.